

J. Melody



Comptroller General  
of the United States

Washington, D.C. 20543

140157

## Decision

**Matter of:** Tark International

**File:** B-233740.4

**Date:** November 28, 1989

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### DIGEST

Protest that agency should delay bid opening until after Department of Labor issues modified wage determination to assure competition on an equal basis is denied; since wage determination issued after bid opening is not applicable to solicitation, all bidders are competing equally, on basis of current wage determination.

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### DECISION

Tark International protests the award of any contract under invitation for bids (IFB) No. N62474-88-B-6167, issued by the Navy for security services. Tark protests that the November 30, 1989, bid opening date should have been delayed until the Department of Labor issues a new wage determination (which Tark apparently considers imminent) to replace the one currently in effect. Tark believes it would be improper to base the competition on the current wage determination and then ultimately negotiate with the low bidder based on the wage rates in the new determination.

We dismiss the protest.

Tark's protest appears to be based on its misunderstanding of the effect of wage determination modifications issued after bid opening. Under Federal Acquisition Regulation (FAR) § 22.404-6(b)(1), such a modification is effective for purposes of a particular IFB only if it is published in the Federal Register or received by the contracting agency 10 or more calendar days before the scheduled bid opening date (or less than 10 days, unless the contracting officer finds there is insufficient time before bid opening to notify prospective bidders); wage determination modifications published in the Federal Register or received by the agency after bid opening are not effective and should not be included in the IFB. FAR § 22.404-6(b)(2).

Given, therefore, that wage rate modifications do not have retroactive effect, if Labor does proceed with issuance of a modified wage determination after the November 30 bid opening, it will have no effect on this IFB. Accordingly, there is no basis for requiring the agency to delay bid opening here pending issuance of a new wage determination.

The protest is dismissed.

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for

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Associate General Counsel